

111TH CONGRESS
1ST SESSION

H. R. 995

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imaging for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. NADLER of New York (for himself, Mr. ACKERMAN, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Ms. BORDALLO, Mrs. CAPPS, Mrs. CHRISTENSEN, Mr. CLEAVER, Mr. COHEN, Ms. EDWARDS of Maryland, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. HONDA, Ms. KAPTUR, Mr. KUCINICH, Ms. LEE of California, Mrs. MALONEY, Mr. MICHAUD, Mrs. NAPOLITANO, Ms. NORTON, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SIRES, Ms. SUTTON, Ms. ROS-LEHTINEN, Ms. WASSERMAN SCHULTZ, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imag-

ing for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*
 3 **SECTION 1. SHORT TITLE; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Mammogram and MRI Availability Act of 2009”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) An estimated 211,000 women will have been
 8 diagnosed with breast cancer and an estimated
 9 40,000 women will have died from breast cancer
 10 during 2005.

11 (2) Breast cancer is the second leading cause of
 12 death for women in the United States and is the
 13 leading cause of death for women between the ages
 14 of 40 and 49 in the United States.

15 (3) Breast cancer death rates were reduced by
 16 24 percent from 1990 to 2000.

17 (4) A study sponsored by the National Cancer
 18 Institute and published on October 27, 2005, con-
 19 cluded that up to 65 percent of the reduction in the
 20 number of breast cancer deaths was directly attrib-
 21 utable to screening mammography.

22 (5) An expert panel convened by the National
 23 Institutes of Health’s National Cancer Institute rec-

1 ommended on February 21, 2002, that women be-
 2 tween the ages of 40 and 49 should be screened
 3 every one to two years with mammography.

4 (6) The American Cancer Society recommends
 5 that women over the age of 40 receive an annual
 6 mammogram.

7 (7) The American Cancer Society, after review-
 8 ing research since 2002, urges that women at high
 9 risk for breast cancer receive annual magnetic reso-
 10 nance imaging in addition to a mammogram because
 11 such imaging may detect small tumors not found by
 12 a mammogram.

13 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**
 14 **RAPHY UNDER GROUP HEALTH PLANS.**

15 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

16 (1) Subpart 2 of part A of title XXVII of the
 17 Public Health Service Act is amended by adding at
 18 the end the following new section:

19 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**
 20 **SCREENING MAMMOGRAPHY AND MAGNETIC**
 21 **RESONANCE IMAGING.**

22 **“(a) REQUIREMENTS FOR COVERAGE OF ANNUAL**
 23 **SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC**
 24 **RESONANCE IMAGING.—**

1 “(1) IN GENERAL.—A group health plan, and a
2 health insurance issuer offering group health insur-
3 ance coverage, that provides coverage for diagnostic
4 mammography for any woman who is 40 years of
5 age or older shall provide coverage for annual
6 screening mammography for such a woman and di-
7 agnostic mammography, annual screening mammog-
8 raphy, and annual magnetic resonance imaging for
9 any high risk woman under terms and conditions
10 that are not less favorable than the terms and condi-
11 tions for coverage of diagnostic mammography for a
12 woman who is 40 years of age or older.

13 “(2) DEFINITIONS.—For purposes of this sec-
14 tion—

15 “(A) The term ‘diagnostic mammography’
16 means a radiologic procedure that is medically
17 necessary for the purpose of diagnosing breast
18 cancer and includes a physician’s interpretation
19 of the results of the procedure.

20 “(B) The term ‘high risk woman’ means a
21 woman who—

22 “(i) has a known BRCA1 or BRCA2
23 gene mutation;

24 “(ii) has a mother, father, brother,
25 sister, or child with such a gene mutation

1 and has not had genetic testing to deter-
2 mine the existence of such a gene muta-
3 tion;

4 “(iii) has a lifetime risk of breast can-
5 cer of 20 percent or greater, according to
6 risk assessment tools that are based main-
7 ly on family history;

8 “(iv) had radiation therapy to the
9 chest when the woman was between the
10 ages of 10 and 30 years of age;

11 “(v) has Li-Fraumeni syndrome,
12 Cowden syndrome, or Bannayan-Riley-
13 Ruvalcaba syndrome, or has a relative de-
14 scribed in clause (ii) who has one of such
15 syndromes; or

16 “(vi) has another predisposing condi-
17 tion, as determined by a physician, that
18 significantly increases the risk of the
19 woman contracting breast cancer.

20 “(C) The term ‘screening mammography’
21 means a radiologic procedure provided to a
22 woman for the purpose of early detection of
23 breast cancer and includes a physician’s inter-
24 pretation of the results of the procedure.

1 “(b) PROTECTIONS.—A group health plan, and a
2 health insurance issuer offering group health insurance
3 coverage in connection with a group health plan, may
4 not—

5 “(1) deny coverage for annual screening mam-
6 mography or annual magnetic resonance imaging on
7 the basis that the coverage is not medically nec-
8 essary or on the basis that the screening mammog-
9 raphy or magnetic resonance imaging, respectively,
10 is not pursuant to a referral, consent, or rec-
11 ommendation by any health care provider;

12 “(2) deny to a woman eligibility, or continued
13 eligibility, to enroll or to renew coverage under the
14 terms of the plan, solely for the purpose of avoiding
15 the requirements of this section;

16 “(3) provide monetary payments or rebates to
17 women to encourage such women to accept less than
18 the minimum protections available under this sec-
19 tion;

20 “(4) penalize or otherwise reduce or limit the
21 reimbursement of an attending provider because
22 such provider provided care to an individual partici-
23 pant or beneficiary in accordance with this section;
24 or

1 “(5) provide incentives (monetary or otherwise)
2 to an attending provider to induce such provider to
3 provide care to an individual participant or bene-
4 ficiary in a manner inconsistent with this section.

5 “(c) RULES OF CONSTRUCTION.—

6 “(1) Nothing in this section shall be construed
7 to require a woman who is a participant or bene-
8 ficiary to undergo annual screening mammography
9 or annual magnetic resonance imaging.

10 “(2) This section shall not apply with respect to
11 any group health plan, or any group health insur-
12 ance coverage offered by a health insurance issuer,
13 which does not provide benefits for diagnostic mam-
14 mography.

15 “(3) Nothing in this section shall be construed
16 as preventing a group health plan or issuer from im-
17 posing deductibles, coinsurance, or other cost-shar-
18 ing in relation to benefits for screening mammog-
19 raphy or magnetic resonance imaging under the plan
20 (or under health insurance coverage offered in con-
21 nection with a group health plan), except that such
22 coinsurance or other cost-sharing for any portion of
23 such benefits may not be greater than such coinsur-
24 ance or cost-sharing that is otherwise applicable with
25 respect to benefits for diagnostic mammography.

1 “(4) Women should (but are not required to)
2 consult with appropriate health care practitioners
3 before undergoing screening mammography or mag-
4 netic resonance imaging, but nothing in this section
5 shall be construed as requiring the approval of a
6 health care practitioner before a woman undergoes
7 an annual screening mammography or annual mag-
8 netic resonance imaging.

9 “(d) NOTICE.—A group health plan under this part
10 shall comply with the notice requirement under section
11 715(d) of the Employee Retirement Income Security Act
12 of 1974 with respect to the requirements of this section
13 as if such section applied to such plan.

14 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
15 Nothing in this section shall be construed to prevent a
16 group health plan or a health insurance issuer offering
17 group health insurance coverage from negotiating the level
18 and type of reimbursement with a provider for care pro-
19 vided in accordance with this section.

20 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
21 ANCE COVERAGE IN CERTAIN STATES.—

22 “(1) SCREENING MAMMOGRAPHY.—The re-
23 quirements of this section, with respect to annual
24 screening mammography, shall not apply with re-
25 spect to health insurance coverage for women who

1 are 40 years of age or older or who are high risk
2 women if there is a State law (as defined in section
3 2723(d)(1)) for a State that regulates such cov-
4 erage, that requires coverage to be provided for an-
5 nual screening mammography for women who are 40
6 years of age or older or who are high risk women
7 (as defined in subsection (a)(2)(B)), respectively,
8 and that provides at least the protections described
9 in subsection (b).

10 “(2) MAGNETIC RESONANCE IMAGING.—The re-
11 quirements of this section, with respect to annual
12 magnetic resonance imaging, shall not apply with re-
13 spect to health insurance coverage if there is a State
14 law (as defined in section 2723(d)(1)) for a State
15 that regulates such coverage, that requires coverage
16 to be provided for annual magnetic resonance imag-
17 ing for high risk women (as defined in subsection
18 (a)(2)(B)), and that provides at least the protections
19 described in subsection (b).

20 “(3) CONSTRUCTION.—Section 2723(a)(1) shall
21 not be construed as superseding a State law de-
22 scribed in paragraph (1) or (2).”.

23 (2) Section 2723(c) of such Act (42 U.S.C.
24 300gg–23(c)) is amended by striking “section 2704”
25 and inserting “sections 2704 and 2708”.

1 (b) ERISA AMENDMENTS.—

2 (1) Subpart B of part 7 of subtitle B of title
3 I of the Employee Retirement Income Security Act
4 of 1974 is amended by adding at the end the fol-
5 lowing new section:

6 **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR**
7 **SCREENING MAMMOGRAPHY AND MAGNETIC**
8 **RESONANCE IMAGING.**

9 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL
10 SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC
11 RESONANCE IMAGING.—

12 “(1) IN GENERAL.—A group health plan, and a
13 health insurance issuer offering group health insur-
14 ance coverage, that provides coverage for diagnostic
15 mammography for any woman who is 40 years of
16 age or older shall provide coverage for annual
17 screening mammography for such a woman and di-
18 agnostic mammography, annual screening mammog-
19 raphy, and annual magnetic resonance imaging for
20 any high risk woman under terms and conditions
21 that are not less favorable than the terms and condi-
22 tions for coverage of diagnostic mammography for a
23 woman who is 40 years of age or older.

24 “(2) DEFINITIONS.—For purposes of this sec-
25 tion—

1 “(A) The term ‘diagnostic mammography’
2 means a radiologic procedure that is medically
3 necessary for the purpose of diagnosing breast
4 cancer and includes a physician’s interpretation
5 of the results of the procedure.

6 “(B) The term ‘high risk woman’ means a
7 woman who—

8 “(i) has a known BRCA1 or BRCA2
9 gene mutation;

10 “(ii) has a mother, father, brother,
11 sister, or child with such a gene mutation
12 and has not had genetic testing to deter-
13 mine the existence of such a gene muta-
14 tion;

15 “(iii) has a lifetime risk of breast can-
16 cer of 20 percent or greater, according to
17 risk assessment tools that are based main-
18 ly on family history;

19 “(iv) had radiation therapy to the
20 chest when the woman was between the
21 ages of 10 and 30 years of age;

22 “(v) has Li-Fraumeni syndrome,
23 Cowden syndrome, or Bannayan-Riley-
24 Ruvalcaba syndrome, or has a relative de-

1 scribed in clause (ii) who has one of such
2 syndromes; or

3 “(vi) has another predisposing condi-
4 tion, as determined by a physician, that
5 significantly increases the risk of the
6 woman contracting breast cancer.

7 “(C) The term ‘screening mammography’
8 means a radiologic procedure provided to a
9 woman for the purpose of early detection of
10 breast cancer and includes a physician’s inter-
11 pretation of the results of the procedure.

12 “(b) PROTECTIONS.—A group health plan, and a
13 health insurance issuer offering group health insurance
14 coverage in connection with a group health plan, may
15 not—

16 “(1) deny coverage described in subsection
17 (a)(1) on the basis that the coverage is not medically
18 necessary or on the basis that the screening mam-
19 mography or magnetic resonance imaging is not pur-
20 suant to a referral, consent, or recommendation by
21 any health care provider;

22 “(2) deny to a woman eligibility, or continued
23 eligibility, to enroll or to renew coverage under the
24 terms of the plan, solely for the purpose of avoiding
25 the requirements of this section;

1 “(3) provide monetary payments or rebates to
2 women to encourage such women to accept less than
3 the minimum protections available under this sec-
4 tion;

5 “(4) penalize or otherwise reduce or limit the
6 reimbursement of an attending provider because
7 such provider provided care to an individual partici-
8 pant or beneficiary in accordance with this section;
9 or

10 “(5) provide incentives (monetary or otherwise)
11 to an attending provider to induce such provider to
12 provide care to an individual participant or bene-
13 ficiary in a manner inconsistent with this section.

14 “(c) RULES OF CONSTRUCTION.—

15 “(1) Nothing in this section shall be construed
16 to require a woman who is a participant or bene-
17 ficiary to undergo annual screening mammography
18 or annual magnetic resonance imaging.

19 “(2) This section shall not apply with respect to
20 any group health plan, or any group health insur-
21 ance coverage offered by a health insurance issuer,
22 which does not provide benefits for diagnostic mam-
23 mography.

24 “(3) Nothing in this section shall be construed
25 as preventing a group health plan or issuer from im-

1 posing deductibles, coinsurance, or other cost-shar-
2 ing in relation to benefits for screening mammog-
3 raphy or magnetic resonance imaging under the plan
4 (or under health insurance coverage offered in con-
5 nection with a group health plan), except that such
6 coinsurance or other cost-sharing for any portion of
7 such benefits may not be greater than such coinsur-
8 ance or cost-sharing that is otherwise applicable with
9 respect to benefits for diagnostic mammography.

10 “(4) Women should (but are not required to)
11 consult with appropriate health care practitioners
12 before undergoing screening mammography or mag-
13 netic resonance imaging, but nothing in this section
14 shall be construed as requiring the approval of a
15 health care practitioner before a woman undergoes
16 an annual screening mammography or annual mag-
17 netic resonance imaging.

18 “(d) NOTICE UNDER GROUP HEALTH PLAN.—The
19 imposition of the requirements of this section shall be
20 treated as a material modification in the terms of the sum-
21 mary plan described in section 102(a), for purposes of as-
22 suring notice of such requirements under the plan; except
23 that the summary description required to be provided
24 under the last sentence of section 104(b)(1) with respect
25 to such modification shall be provided by not later than

1 60 days after the first day of the first plan year in which
2 such requirements apply.

3 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—
4 Nothing in this section shall be construed to prevent a
5 group health plan or a health insurance issuer offering
6 group health insurance coverage from negotiating the level
7 and type of reimbursement with a provider for care pro-
8 vided in accordance with this section.

9 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
10 ANCE COVERAGE IN CERTAIN STATES.—

11 “(1) SCREENING MAMMOGRAPHY.—The re-
12 quirements of this section, with respect to annual
13 screening mammography for women who are 40
14 years of age or older or for high risk women, shall
15 not apply with respect to health insurance coverage
16 if there is a State law (as defined in section
17 731(d)(1)) for a State that regulates such coverage,
18 that requires coverage to be provided for annual
19 screening mammography for women who are 40
20 years of age or older or for high risk women (as de-
21 fined in subsection (a)(2)(B)), respectively, and that
22 provides at least the protections described in sub-
23 section (b).

24 “(2) MAGNETIC RESONANCE IMAGING.—The re-
25 quirements of this section, with respect to annual

1 magnetic resonance imaging, shall not apply with re-
 2 spect to health insurance coverage if there is a State
 3 law (as defined in section 731(d)(1)) for a State
 4 that regulates such coverage, that requires coverage
 5 to be provided for annual magnetic resonance imag-
 6 ing for high risk women (as defined in subsection
 7 (a)(2)(B)), and that provides at least the protections
 8 described in subsection (b).

9 “(3) CONSTRUCTION.—Section 731(a)(1) shall
 10 not be construed as superseding a State law de-
 11 scribed in paragraph (1) or (2).”.

12 (2) Section 731(c) of such Act (29 U.S.C.
 13 1191(c)) is amended by striking “section 711” and
 14 inserting “sections 711 and 715”.

15 (3) Section 732(a) of such Act (29 U.S.C.
 16 1191a(a)) is amended by striking “section 711” and
 17 inserting “sections 711 and 715”.

18 (4) The table of contents in section 1 of such
 19 Act is amended by inserting after the item relating
 20 to section 714 the following new item:

“Sec. 715. Standards relating to benefits for screening mammography and
 magnetic resonance imaging.”.

21 (c) EFFECTIVE DATES.—

22 (1) Subject to paragraph (2), the amendments
 23 made by this section shall apply with respect to
 24 group health plans (and health insurance coverage

1 offered in connection with group health plans) for
2 plan years beginning on or after 1 year after the
3 date of the enactment of this Act.

4 (2)(A) In the case of a group health plan main-
5 tained pursuant to 1 or more collective bargaining
6 agreements between employee representatives and 1
7 or more employers ratified before the date of the en-
8 actment of this Act, the amendments made by this
9 section shall not apply to plan years beginning be-
10 fore the later of—

11 (i) the date on which the last collec-
12 tive bargaining agreements relating to the
13 plan terminates (determined without re-
14 gard to any extension thereof agreed to
15 after the date of the enactment of this
16 Act); or

17 (ii) 1 year after the date of the enact-
18 ment of this Act.

19 (B) For purposes of subparagraph (A)(i), any
20 plan amendment made pursuant to a collective bar-
21 gaining agreement relating to the plan which
22 amends the plan solely to conform to any require-
23 ment added by this section shall not be treated as
24 a termination of such collective bargaining agree-
25 ment.

1 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**
 2 **RAPHY AND ANNUAL MAGNETIC RESONANCE**
 3 **IMAGING UNDER INDIVIDUAL HEALTH COV-**
 4 **ERAGE.**

5 (a) IN GENERAL.—Part B of title XXVII of the Pub-
 6 lic Health Service Act is amended by inserting after sec-
 7 tion 2753 the following new section:

8 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR**
 9 **SCREENING MAMMOGRAPHY AND MAGNETIC**
 10 **RESONANCE IMAGING.**

11 “(a) IN GENERAL.—The provisions of section 2708
 12 (other than subsections (d) and (f)) shall apply to health
 13 insurance coverage offered by a health insurance issuer
 14 in the individual market in the same manner as it applies
 15 to health insurance coverage offered by a health insurance
 16 issuer in connection with a group health plan in the small
 17 or large group market.

18 “(b) NOTICE.—A health insurance issuer under this
 19 part shall comply with the notice requirement under sec-
 20 tion 715(d) of the Employee Retirement Income Security
 21 Act of 1974 with respect to the requirements referred to
 22 in subsection (a) as if such section applied to such issuer
 23 and such issuer were a group health plan.

24 “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-
 25 ANCE COVERAGE IN CERTAIN STATES.—

1 “(1) ANNUAL SCREENING MAMMOGRAPHY.—

2 The requirements of this section, with respect to an-
3 nual screening mammography for women who are 40
4 years of age or older or for high risk women, shall
5 not apply with respect to health insurance coverage
6 if there is a State law (as defined in section
7 2723(d)(1)) for a State that regulates such cov-
8 erage, that requires coverage in the individual health
9 insurance market to be provided for annual screen-
10 ing mammography for women who are 40 years of
11 age or older or for high risk women, respectively,
12 and that provides at least the protections described
13 in section 2708(b) (as applied under subsection (a)).

14 “(2) MAGNETIC RESONANCE IMAGING.—The re-
15 quirements of this section, with respect to annual
16 magnetic resonance imaging, shall not apply with re-
17 spect to health insurance coverage if there is a State
18 law (as defined in section 2723(d)(1)) for a State
19 that regulates such coverage, that requires coverage
20 in the individual health insurance market to be pro-
21 vided for annual magnetic resonance imaging for
22 high risk women, and that provides at least the pro-
23 tections described in section 2708(b) (as applied
24 under subsection (a)).

1 “(3) CONSTRUCTION.—Section 2762(a) shall
2 not be construed as superseding a State law de-
3 scribed in paragraph (1) or (2).”.

4 (b) CONFORMING AMENDMENT.—Section 2762(b)(2)
5 of such Act (42 U.S.C. 300gg-63(b)(2)) is amended by
6 striking “section 2751” and inserting “sections 2751 and
7 2754”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall apply with respect to health insurance
10 coverage offered, sold, issued, or renewed in the individual
11 market on or after the date that is 1 year after the date
12 of the enactment of this Act.

○